BRIEF IN SUPPORT OF PETITION.

Opinions Below.

The opinions below are reported as follows:

District Court:

49 Fed. Supp. 436 (T. R. 37-42).

Circuit Court of Appeals:

139 Fed. (2d) ..... (T. R. 61-65).

Jurisdiction.

Jurisdiction is invoked, as stated in the petition, to review the District Court decree entered April 17, 1943 and the Circuit Court of Appeals decree entered January 20, 1944.

Statement.

The principal facts have already been set forth in the petition. A summary of the argument appears in the index. All of the errors assigned (T. R. 45-46) are intended to be urged.

ARGUMENT.

Sec. 70.11 (1) Wis. Stats., as Amended in 1941, Is Valid.

Prior to the effective date of the amendment all lands owned exclusively by the United States in Wisconsin were by old Sec. 70.11 (1) Wis. Stats. exempt from taxation. The statute as amended effective May 9, 1941 provides:

> "70.11 Property exempt from taxation. The property in this section described is exempt from taxation, to wit:
>
> "(1) That owned exclusively by the United States, *not including, however, any residential, rental income producing, improved real estate owned by the United States or any corporation whose capital stock is owned by the United States government or any corporate or other agency having control and jurisdiction over and administering any such real estate in this subsection above described, which improved real estate has heretofore or may hereafter be acquired by the United States or any such federal corporation or agency.* * * *"

The U. S. Constitution does not expressly grant tax immunity to the United States over lands held by it in the several states. The states alone have sovereign power to grant or ~~delay~~ DENY tax immunity in the absence of a federal constitutional provision to the contrary.

The U. S. Constitution does not impliedly grant such unconditional tax immunity to the United States.

Art. I, Sec. 8 U. S. Const. provides Congress shall have power, among other things, to:

> "* * * provide for the common defense and general welfare of the United States; * * *
>
> "* * *
>
> "*To exercise exclusive legislation* in all cases whatsoever, over such district (not exceeding ten miles

square) as may, *by cession of particular states*, and the acceptance of Congress, become the seat of the government of the United States, and *to exercise like authority over all places purchased by the consent of the legislature of the state* in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and *other needful buildings;*—And

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof." (Emphasis supplied.)

While taxation is an inherent sovereign power of all states, it is also a statutory power under the respective state taxation statutes. Congress adopts its taxation program through legislation. The inherent taxation power of the federal government and state governments can be exercised only through legislation. So the "exclusive legislation" power in Section 8 above would include the power to tax. This exclusive legislative power to tax is, however, granted only with the consent of the state, excepting as related to the District of Columbia. So state consent to such exclusive legislation on taxation matters is a condition precedent to the exercise of that power by the Congress over lands in the several states.

Art. VI, U. S. Const. provides in part:

"* * *

"This constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

"* * *"

It is under this supremacy clause that respondents assert unconditional United States tax immuity. They

assert such power as an implied power. They assert such unconditional implied power as against the conditional express power, with the consent of the states only, as provided in Section 8 of Article I.

Tax exemptions must be clear and unambiguous.

Pollock v. *Farmers' Loan & T. Co.*, 157 U. S. 439.
Shaffer v. *Carter*, 252 U. S. 37.

These cases and many other cases from this court and the state courts hold that an exemption from taxation, whether perpetual or for a limited term, must be granted in language so clear and unmistakable as to leave no doubt as to the legislative intent and purpose; an exemption provision must be so clear as to leave no room for controversy; the exemption will not be recognized unless granted in terms too plain to be mistaken; and the presumption is always against any surrender of a taxing power; the exemption must not be left to implication or inference; and a well-founded doubt as to tax immunity is fatal to the claim of exemption.

The delegates to the United States Constitutional Convention in the atmosphere of the times, inserted no express or implied U. S. tax freedom immunities. No such immunity was expressly suggested or argued during the constitutional convention.

Madison's Journal of the Constitutional Convention, edited by E. H. Scott, Spec. Ed., published in 1893, containing Madison's notes on all the arguments, discussions, motions and proposed constitutional provisions, 748 pages in length, does not report a single note where United States tax immunity was mentioned by any delegate.

President Madison submitted his notes to each speaker at the close of each day's session, or soon thereafter, and procured the approval from each speaker of his notes as

to their remarks. If it were ever intended by the framers that the United States should have such tax immunity without state consent, that proposition would have been debated at length and the arguments pro and con of the delegates reported, so that the clear intent and action of the delegates one way or another would have been shown.

The state statute must be construed, if fairly possible, to avoid unconstitutionality. It is presumed to be constitutional and the burden is on respondents to negative every conceivable basis which might support the constitutionality of the statute. ~~Citing~~ *United States* v. *LaFranca*, 282 U. S. 568; *Madden* v. *Kentucky*, 309 U. S. 83.

United States tax freedom would violate the cardinal principle of state sovereignty, constitute a power to destroy the states and local communities, and no such federal power was ever intended by the framers.

The Supremacy Clause Properly Construed Does Not Grant Federal Tax Immunity.

A tax immunity constitutional provision must be clear and unmistakable. It could not rest on implication or presumption. It does not exist unless the states grant such tax exemption by particular consent in respect to particular parcels of real estate acquired by the United States.

If the constitution expressly requires state consent for exclusive legislation by the United States and its power to provide for tax exemption of its lands, for forts, magazines, arsenals and dry-docks, how can it be said that such tax exemption exists in reference to federal housing projects?

The "needful buildings" mentioned in Section 8 of Article I mean and include post offices, federal court houses, customs houses and similar essential federal buildings

erected and maintained for the performance of essential governmental functions, and do not mean and include low rent housing projects such as Parklawn. State consent even for such "needful buildings" is a prerequisite.

If states were to be prohibited by the constitution from taxing federally owned lands, in respect to which they have not granted consent to tax freedom, it would have been very easy for the framers of the constitution to include in Article I, Section 10, along with the other prohibitions upon the states, a prohibition against the taxation of federal real estate.

The Tenth amendment provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It follows that the power of tax immunity does not exist because not delegated either expressly or impliedly to the United States, and it therefore is reserved to the states or the people.

If unconditional tax immunity be of grave importance to the United States, it can be obtained only by a constitutional amendment, with the consent of the states.

If the United States has tax immunity under the supremacy clause, why should Congress exact of the states as a condition of admission a tax immunity constitutional provision? Exaction of tax immunity clauses from the later states constitutes a discrimination against those states and in favor of the thirteen original colonies, and it violates Art. IV, Sec. 3, U. S. Constitution, requiring admission of all states to the union on a uniform and equal footing.

Upon this transcendent power of taxation there can be no divided sovereignty as between the United States and

the several states. The power of taxation lies with the states, and the states alone, and not with the United States.

In *State Tax Commission of Utah* v. *Aldrich, et al.*, 316 U. S. 174, involving the issue of the right of the State of New York to impose inheritance taxes on shares of stock in a Utah corporation, Mr. Justice Frankfurter, concurring in the majority opinion, at page 182 says, among other things:

> "The taxing power is an incident of government. It does not derive from technical legal concepts. The power to tax is coextensive with the fundamental power of society over the persons and things made subject to tax. Each State of the Union has the same taxing power as an independent government, except insofar as that power has been curtailed by the Federal Constitution.
>
> "The taxing power of the States was limited by the Constitution and the original ten amendments in only three respects: (1) no State can, without the consent of Congress, lay any imposts or duties on imports or exports, except as necessary for executing its inspection laws, Art. I, Sec. 10 (2); (2) no State can, without the consent of Congress, lay any tonnage duties, Art. I, Sec. 10 (3); and (3) by virtue of the Commerce Clause, Art. I, Sec. 8 (3), no State can tax so as to discriminate against interstate commerce. (For present purposes I put the Contract Clause to one side.)"

The Justice includes here no express, implied or incidental constitutional power of real estate tax immunity in the United States, nor does he indicate that any power of the sovereign states so to tax non-consent U. S. lands is lacking.

Consent of the State Is a Condition Precedent to United States Tax Immunity.

We have presented our argument on the necessity of state consent above.

It is admitted that the United States did not have the consent of the state to acquire and exercise exclusive legislation over the Parklawn housing project premises.

Sec. 1.01 Rev. 1941 Stats. provides in part:

> "*State sovereignty and jurisdiction.* The sovereignty and jurisdiction of this state extend to all places within the boundaries thereof as declared in the constitution, subject only to such rights of jurisdiction as have been or shall be acquired by the United States over any places therein; and it shall be the duty of the governor, and of all subordinate officers of the state, to maintain and defend its sovereignty and jurisdiction. * * *"

Sec. 1.02 W. S. provides:

> "*United States sites and buildings.* Subject to the conditions mentioned in section 1.03 the legislature hereby consents to the acquisitions heretofore effected and hereafter to be effected by the United States, by gift, purchase or condemnation proceedings, of the title to places or tracts of land within the state; and, subject to said conditions, the state hereby grants, cedes and confirms to the United States exclusive jurisdiction over all such places and tracts. Such acquisitions are limited to the following purposes:
>
> "(1) To sites for the erection of forts, magazines, arsenals, dockyards, custom houses, courthouses, post offices, or other public buildings or for any purpose whatsoever contemplated *by the seventeenth clause of section eight of article one of the constitution of the United States.*
>
> "(2) To a tract of forty thousand acres of land in township 17 and 18 north, ranges 2 and 3 west, near

Sparta, in Monroe County, to be used for military purposes as a target and maneuver range and such other purposes as the war department may deem necessary and proper.

"(3) To erect thereon dams, abutments, locks, lockkeepers' dwellings, chutes, or other structures necessary or desirable in improving the navigation of the rivers or other waters within and on the borders of this state."

Sec. 1.03 W. S. provides:

"*Concurrent jurisdiction over United States sites; conveyances.* The conditions mentioned in section 1.02 are the following *conditions precedent*:

"(1) That an application setting forth an exact description of the place or tract so acquired shall be made by an authorized officer of the United States to the governor, accompanied by a plat thereof, and by proof that all conveyances and a copy of the record of all judicial proceedings necessary to the acquisition of an unincumbered title by the United States have been recorded in the office of the register of deeds of each county in which such place or tract may be situated in whole or in part.

"(2) That the ceded jurisdiction shall not vest in the United States until they shall have complied with all the requirements on their part of sections 1.02 and 1.03 and shall continue so long only as the place or tract shall remain the property of the United States.

"(3) That the state shall forever retain concurrent jurisdiction over every such place or tract to the extent that all legal and military process issued under the authority of the state may be served anywhere thereon, or in any building situate in whole or in part thereon."

The constitutionality of these state statutory provisions must be presumed. The burden is on the respondents to demonstrate their invalidity.

The Congress on three occasions has recognized that state consent to exclusive legislation and consequent tax freedom is necessary.

(1) In 1838 Congress enacted Title IV, sec. 11, U. S. C. A. providing:

> "The President of the United States is authorized to procure the assent of the legislature of any State, within which any purchase of land has been made for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, without such consent having been obtained."

(2) The Congress in 1841 adopted a resolution, later made a statute, Title 40, Chap. 3, sec. 255, U. S. C. A., which as amended June 28, 1930 provides in part:

> "No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy yard, customhouse, lighthouse, *or other public buildings of any kind whatever*, until the written opinion of the Attorney General shall be had in favor of the validity of the title, *nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given.* • • •"

This statute forbids the expenditures of public moneys on lands purchased by any officer or department until, among other things, state consent has been procured. This statute was in effect in 1935 when the United States bought Parklawn, and during the next two years when the houses were constructed.

(3) This section was later amended February 1, 1940, when the following was added:

> "• • • • •
>
> "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; *but*

the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interest therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the States where such lands are situated. *Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."*

This amendment became effective 5 years after the Government bought Parklawn and is now in force as no change was effected by the amendment approved October 9, 1940. Under the original statute, prior to the 1930 and other amendments, the U. S. Attorney General in Vol. 10, Op. Atty. Gen. 34 (1861) held:

> "There is nothing in the Constitution which prohibits the United States purchasing land within a state without the consent of the state legislature; but when land is purchased by them in a state without such consent the United States cannot exercise 'exclusive legislation' over the place."

The Attorney General in the same opinion further ruled:

> "If the state legislature, *for any or no assigned reason,* withhold its consent to a purchase of the site, then the government has tied its own hands. It may purchase and hold the land to be used; it may stand in the most pressing need of a fort, a lighthouse, or a post office, upon the spot, and yet it cannot spend a dollar of public money upon the site for the erection of the necessary building thereon."

In 12 Op. Atty. Gen. 428 (1868) the Attorney General ruled:

> "Accession of jurisdiction over land purchased by the United States by a constitutional convention of a state is not a consent to the purchase by the Legislature."

In the case at bar the Wisconsin legislature has authorized the Governor to grant the consent, but no application therefor has been made.

It may well be further argued that constitutional consent, such as that in Art. II, sec. 2 of the Wis. Const., does not comply with the legislative consent required by Art. I, sec. 8, clause 17 of the U. S. Const. This would make all the more infirm the position of respondents and the ruling of the trial court that the Wis. Const. forbids taxation of Parklawn.

In *U. S.* v. *Cornell* (Fed. Cas. No. 14,867) C. C. R. I. 1819, it was held:

> "The purchase of lands by the United States for public purposes, within the territorial limits of a state, does not of itself oust the jurisdiction of such state over the lands purchased."

In *Ryan* v. *State*, 61 P. (2d) 1276 (Wash.) it was held that the United States acquires exclusive jurisdiction only with the consent of the particular state.

The U. S. Dist. Court, for Minnesota, Sixth Division, by Joyce, District Judge, on April 28, 1942, in the case of *United States* v. *1749.06 Acres of Land, et al*, and four other companion cases, by memorandum order (not reported) held that under the Minnesota Stats. relating to state consent to the acquisition and holding of lands in Minnesota, as amended in 1941, the U. S. could not condemn said lands because the Governor of Minnesota had not given the state's consent and that the Governor could

refuse such consent under the statute if he deemed the consent to the acquisition inconsistent with the best interests of the state. Upon objections of the State of Minnesota and others the petition for condemnation was dismissed. The state consent requirement cannot be meaningless; it has force, must be recognized, and controls over any implied or incidental powers derived by construction.

The Van Brocklin Decision Should Not Rule the Case at Bar Adversely to the Petitioners.

The real estate involved in the *Van Brocklin case* was acquired by the government as an incident to the exercise of its regular governmental functions. In the case at bar the United States, as held in *U. S.* v. *Brown, Clerk of Ct., Flagler Co., Fla.*, 41 Fed. Supp. 838, was engaged in a purely commercial enterprise and was exercising no sovereign function; the government in the Florida case became a partner in a trading company, in the agriculture mortgage loan business, and divested itself of its sovereign character and took on that of a private citizen, and it descended to the level of those with whom it associated (Citing *U. S.* v. *Strang*, 254 U. S. 491, 41 S. Ct. 165, 65 L. Ed. 368).

The government in the case at bar engaged in business in its proprietary capacity, became a landlord and does business with its tenants and charges and accepts rentals for the possession and use of the 518 dwelling units involved.

In *Columbus Metropolitan Housing Authority* v. *Thatcher*, 42 N. E. (2d) 437 (Ohio) at 442, it was held "that where the dwellings are leased to family units for the purposes of private homes, the use of such dwelling is private and not public."

In *U. S.* v. *Certain Lands in Louisville*, 78 Fed. (2d) 684, it was held that real estate for public housing projects cannot be acquired by condemnation because they serve no public purpose.

The *Van Brocklin* decision is primarily founded on *M'Culloch* v. *Maryland, et al.*, 4 Wheat. 316, a case involving the right of a state to impose a tax on the shares of the U. S. bank. No real estate taxes were there involved and in the last paragraph of the opinion the court expressly stated that the opinion did not pass upon the real estate tax exemption issue.

It seems to us that the *Van Brocklin* opinion should be limited in its application to taxes other than real estate taxes, or in the alternative that decision should be reversed, as not sustained by proper construction of the constitutional provisions applicable, or in the further alternative, that the case at bar should be distinguished from the *Van Brocklin* case because of the peculiar facts and circumstances involved, and more especially because of the proprietary landlord status of the United States.

If the *Van Brocklin* decision stands the Congress would have an unlimited power of tax immunity. It would constitute a power to invade without restraint the sovereign power of the several states and their local communities. The United States could build 100 Parklawns in Wisconsin, or even in one city, Milwaukee, with an assessed valuation of $182,300,000 and thus deprive the state, city and county of $6,700,000 in annual taxes, a vast sum, and compel the state, city and county to furnish governmental, judicial, educational and other services to 51,800 families who would receive these benefits without sharing in the expenses incident thereto. Likewise, it could build a Parklawn project for 518 families in a suburban village with a population of about 2,000, about the same as the Parklawn

population, and compel the taxpaying half of the village to support the other half. It is not a sufficient answer to say that the United States would not do these things. The issue is: Does it have the unlimited power to do so? Such action might well cripple and almost destroy the normal state, city, county and village functions. No such power of state and local community crippling or destruction was ever contemplated or created. In disposing of this the theoretical possibilities of many such projects must be considered to settle properly the principle at issue.

The Nominal Offer of the Housing Authority Is So Arbitrary, Unfair, Unreasonable, Inadequate and Inequitable and in Violation of the Plain Purpose of the Statute in Question as to Be Ample Grounds for Denial of the Equitable Relief Sought by Respondents.

The administrator offered, and renewed his offer, to pay $1,109.00 for 1937 and $6,970.00 for the succeeding four years. This is roughly about five per cent of the annual gross rentals of $135,000.

Section 2 of Public Act No. 837, 74th Congress, approved June 29, 1936, provides:

> "Section 2. Upon request of any state or political subdivision in which project has been or will be constructed, the Federal Administrator of Public Works is authorized to enter into an agreement, and to consent to the renewal or alteration thereof with such states or subdivisions for the payment by the United States of sums in lieu of taxes. *Such sums* shall be fixed in such agreement and *shall be based upon the cost of the public or municipal services to be supplied for the benefit of such project or the persons residing on or occupying such premises*, but taking into consideration the benefits to be secured by such state or subdivision from such project." (Emphasis supplied.)

The provisions, so far as material here, were not later appreciably amended by the 1937 Housing Act No. 412, 75th Cong., approved Sept. 1, 1937, but the amendment did contain a provision to the effect that the sums paid in lieu of taxes should not exceed the taxes that would be paid to the state or local subdivisions upon such property if it were not exempt from taxation.

The Congress did not intend any nominal sum.

Notwithstanding the trial court's holding to the contrary, we submit these undisputed facts are sufficient under this statute for interference by the court, and that these nominal offers should be frowned upon and require denial of the equitable relief asked by the Government.

Congress delegated some discretion to the Housing Administrator in negotiating the "in lieu" agreement, but it delegated only reasonable discretion. The administrator would retain about 95% of the rentals and saddle the government expenses upon the state and the local governments.

In the *Village of Cedar Springs* v. *Schlick, et al.*, 45 N. W. 994 (Mich.), where village sought relief in equity, the court held:

> "* * * The maxim, 'He that hath committed inequity shall not have equity,' applies with singular force to the conduct of the complainants in this case. A court of equity will leave these complainants, the people of the village, and the defendant railroad company in the bed they have deliberately made, and to such defense as a court of law may find they are entitled to."

Substantially the same rule was applied in *Markley* v. *Village of Mineral City*, 51 N. E. 28 (Ohio).

In *State of Iowa* v. *Carr et al.*, 191 Fed. 257, the State of Iowa made a claim in a suit of equity to some land that the defendant, Carr, had in his possession for more than

20 years. The court held that although a mere delay "does not, either by limitation or laches, of itself constitute a bar to suits and claims of a state or of the United States, yet, when a sovereignty submits itself to the jurisdiction of a court of equity and prays its aid, its claims and rights are judicable by every other principle and rule of equity applicable to the claims and rights of private parties under similar circumstances."

> "*The equitable claims of a state or of the United States appeal to the conscience of a chancellor with the same, but with no greater or less force than would those of an individual under like circumstances.* (Citing a number of cases.) Thus a state is estopped from ousting a city organized under a void law after the city has been exercising its assumed powers for only four years, but has levied and collected taxes and assessments, constructed bridges and streets, and made other improvements meanwhile without protest or objection on the part of the state. *State* v. *City of Des Moines*, * * * 65 N. W. 818 (Ia.)"

Here the state for 20 years collected taxes on this land. Equity barred it from recovery in view of all of the circumstances.

The Iowa court at page 268 quotes from *U. S.* v. *Chandler-Dunbar Water Power Co.*, 152 Fed. 25:

> "'* * * But when it sues in equity as a private suitor on a cause of action relating to its proprietary interests, it is held to be affected by those equities which are recognized as fundamental in controversies between private parties. And why should this not be so? It derogates from the dignity and character of the government to suppose that, formed as it is to secure impartial justice between individuals, it may nevertheless in the conduct of its own affairs, without regard to the principles it represents, perpetrate upon its citizens wrongs which it would promptly condemn if practiced by one of them upon another.'"

The facts in *U. S.* v. *James Stinson, et al.*, 197 U. S. 200, were very much akin to the facts in the case of *State of Iowa* v. *Carr*, 191 Fed. 257. Here the United States did not begin its action for the recovery of land until 40 years after the original fraud. Six of the fourteen preempters were then dead. One of the living was failing in memory. The Supreme Court would not act in granting relief to the United States, stating that too long a time had run.

In *Pan American Petroleum & Transport Co.* v. *U. S.*, 273 U. S. 456, involving a large sum of money pursuant to a contract obtained through corrupt practice, the court at page 506 says:

> "In suits brought by individuals for rescission of contracts the maxim that he who seeks equity must do equity is generally applied, so that the party against whom relief is sought shall be remitted to the position he occupied before the transaction complained of. * * * *The general principles of equity are applicable in a suit by the United States to secure the cancellation of a conveyance or the rescission of a contract.*" (Citing a number of cases.)

See also:

Causey v. *U. S.*, 240 U. S. 399.
Heckman v. *U. S.*, 224 U. S. 413; and
U. S. v. *Trinidad Coal & Coking Co.*, 137 U. S. 160.

In a case where the National Prohibition Act was alleged to be violated, *Olmstead* v. *United States*, 277 U. S. 438, the court considered wire tapping was proper search and seizure. The *dissent* written by Justice Brandeis (concurred in by three other Justices) on pp. 483-484 states:

> "Will this court, by sustaining the judgment below, sanction such conduct on the part of the Executive? The governing principle has long been settled. It is that a court will not redress a wrong when he who invokes its aid has unclean hands. The maxim of un-

clean hands comes from courts of equity. But the principle prevails also in courts of law. Its common application is in civil actions between private parties. Where the government is the actor, the reasons for applying it are even more persuasive. Where the remedies invoked are those of the criminal law, the reasons are compelling."

Parklawn accommodates 518 families. The annual rentals are $135,000. The annual cost to the city for the services rendered to the Parklawn residents is $130,000, derived in large part from real estate taxes; the County and State spend additional substantial sums each year in furnishing general governmental administration and numerous other services for the benefit of the Parklawn tenants.

The Parklawn property valued at $1,762,500 receives police and fire protection. The taxes as levied would amount only to about $131.18 per family per year. The enterprise is not a slum clearance, public health enterprise. It is a low cost housing venture. Under our view such use should not be material or controlling. Several hundred children attend the public schools without the payment of tuition.

The Congress did not intend any nominal sum. It intended a fair and reasonable sum based upon the costs of the public services rendered and the benefits to the project and the occupants of the premises.

It is respectfully submitted that there was evidence (facts admitted by the motions) before the trial court and the appellate court below upon which to determine the adequacy or inadequacy of the offer and that the offer was arbitrary and so unfair, unreasonable, inadequate and inequitable as to be ample grounds for denying the equitable relief to plaintiffs and that the offer was not for the sole determination of the administrator and beyond judicial interference.

The statute above contemplates an agreement between the federal authorities and the state and local authorities and that presupposes that both sides will be fair and reasonable and a reasonable sum actually offered and agreed upon.

Conclusion.

In view of the foregoing, it is respectfully submitted that a writ of certiorari should be granted and this court should review the decision of the Circuit Court of Appeals and finally reverse it.

Respectfully submitted,

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